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D.B. CIVIL SPECIAL APPEAL NO.68/2007.
[HARI DEVI & ORS. VS. RAJ KUMAR & ORS.]

DATED : 01.03.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr. Rajesh Joshi for the appellant.
Mr.P.P.Choudhary for the respondents.

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Heard learned counsel for the appellant Mr.Rajesh Joshi and Mr.P.P.Choudhary counsel for the respondent petitioner. The presence of the other respondents is not necessary for the purposes of this appeal.

The petitioner had moved a Writ Petition No.6777/2006 for seeking two reliefs firstly that impugned order/ notice Anexure P-4 dated 15.11.2006 which is No Confidence Motion tabled by the respondents and the non-petitioner in the writ petition may be declared illegal and quashed on the ground that notice of No Confidence Motion issued by the Collector was not accompanied with the copy of Motion. A consequential relief was also sought that if during the pendency of the writ petition the No Confidence Motion was passed the same may be

quashed. The other relief was for issuing directions for taking action against such members of the Municipal Board, Mandalgarh against whom complaints and ACD cases are pending.

The appellants-non petitioners moved an application before the learned Single Judge admitting that notice [Annexure P-4] issued by the Collector was not accompanied with copy of the Motion and, therefore, the same may be quashed. Instead of passing the order about which the respondents had not contested the learned Single Judge has admitted the writ petition and issued notices to the other respondents.

The learned counsel for the appellant has urged that when there was no contest to the invalidity of the No Confidence Motion the writ petition should have been allowed and matter should not have been kept pended because it results in continued pendency of an illegal No Confidence Motion which according to the petitioner is illegal and cannot fructify in any effective result.

Learned counsel for the petitioner respondent urges that the other relief claimed against the State only with respect to taking action against against such the members of the Municipal Board, Mandalgarh against whom complaints and ACD cases are pending.

We are of the opinion that it is well settled principle that even at the first date of hearing if part of the claim is admitted by the defendents, on such admitted facts the suit can be decreed to the extent admitted, while continuing with the lis regarding other part. Apparently when the petitioner has claimed that Annexure P-4 is illegal for the reason that notice was not accompanied with the copy of the Motion and this change was admitted by the movers of the Motion, no issue on that count arose between the parties which could be subject to trial and it ought to have been disposed of immediately.

So far as the other disputes are concerned it is between the petitioner and the State and, therefore, on the statement of appellant the other part of dispute

could not have been disposed of. Therefore, while no interference can be made against the order of admission and issuance of notice to other non-petitioners, the part of relief about the invalidity of the Annexure P-4 must be brought to an end and it is declared to be illegal and invalid because the notice of the No Confidence Motion was not accompanied with the copy of the Motion.

Accordingly, the writ petition stands partly allowed and Annexure P-4 Notice issued by the Collector is quashed. The petition for other relief shall continue to remain pendend.

[CHATRA RAM JAT]J. **[RAJESH BALIA], J.**

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